IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 940 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA
HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)
Versus
VARJANG VIDHA SAKHRA & 3 - Opponent(s)

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Appearance :
MR KC SHAH APP for Appellant(s) : 1,
None for Opponent(s) : 1 - 4.

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

and

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date : 03/07/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE BANKIM.N.MEHTA)

1. The appellant – State has filed this

appeal under Section 378 of the Code of Criminal Procedure, 1973 and challenged the judgment and order of acquittal rendered on 15-01-2004 by learned Addl. Sessions Judge, Fast Track Court, Jamnagar in Special (Atrocity) Case No. 18 of 2002 acquitting the respondents accused for the offences punishable u/ss 447, 504 and 506(2)read with Section 114 of the I.P. Code and under Section 3 (1) (iv) of The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'the Atrocities Act").

2. In brief, prosecution case was that complainant Karabhai Pababhai was residing at village Raan in Taluka Kalyanpur, District Jamnagar and land bearing Survey No. 683 Paiki admeasuring 7 Acres and 20 Gunthas each was given in "Santhani" to the complainant and Punja Badha, Viruben Naran and Gauriben Kachara before about 35 years of filing of the compliant. The respondents accused encroached upon 9 vighas of land of complainant and were cultivating the same.

Complainant requested them to return possession of the land but they refused to return possession and gave abuses and threats to kill him.

3. On the basis of complaint filed by Karabhai on 9-4-2000 offence was registered as II – CR No. 27/2000 at Kalyanpur Police Station for the offences punishable u/s 447, 504, 506(2) read with Section 114 of the I.P. Code and u/s 3(1) (iv) of the Atrocities Act and investigation was started. During course of investigation, statement of witnesses were recorded and accused were arrested.

4. On completion of investigation, charge sheet was laid before learned J.M.F.C., Jamkalyanpur. As the offence was exclusively triable by Special Court, the case was committed to the Special Court, Jamnagar and it was registered as Special (Atrocity) Case No. 18 of 2002. Learned Special Judge and Addl. Sessions Judge, Jamnagar framed charge at Exh. 6 against respondents accused for the aforesaid offences. The charge was read over

and explained to respondents – accused who pleaded not guilty to the charge and claimed to be tried. Therefore, prosecution adduced evidence to prove the charge. On competition of recording of evidence, incriminating circumstances appearing against respondents – accused in the evidence were explained to them. The respondents - accused in their further statement recorded u/s 313 of the Criminal Procedure 1973 denied having committed the offence and stated that they are innocent and false case is filed against them.

5. After hearing learned A.P.P. for the State and learned advocate for the accused, trial Court came to the conclusion found that prosecution failed to prove the charge levelled against the accused and therefore acquitted them for the offences charged against them. Being aggrieved and dissatisfied by the impugned judgment, State has prepared this appeal.

6. We have heard learned A.P.P. for the appellant State at length and in great detail.

7. In order to prove the ownership of land, prosecution examined Talati-cum-Mantri of village Raan, P.W. 1 Manharlal Mohandis's Kantariya at Exh. 13. According to the witness, land of village Raan bearing Revenue Survey No. 683 Paiki admeasuring 7 Acre and 20 Gunthas stands in the name of complainant, Punja Budha and Viruben and they belonged to Harijan community which is included in Scheduled Caste declared by Government. The witness produced certified copies of revenue record in respect of the land. In the cross-examination the witness admitted that gazetted officer of Social Welfare department can issue Caste Certificate and also admitted that the Caste Certificate was issued by him looking to the caste of complainant and that list of castes included in scheduled caste and scheduled tribe is not given by Government. The witness also admitted that he is not aware about the internal settlement or contract between the parties. The witness also deposed in the cross-examination that the respondent accused Varjan Vigha had filed Regular Civil Suit No. 3 of 2001 before Civil Court at Khambhaliya against the complainant and

others in respect of possession of land bearing Survey No. 683. The witness also admitted that it cannot be said that whether any one has encroached upon land unless it is measured. The witness also admitted that mention of crop in the revenue record is made on the basis of record but he has not verified the same. In view of this evidence, it clearly emerges that land bearing Survey No.683 paiki of village, 7 Acre and 20 gunthas was given to complainant and others for cultivation as they belonged to Harijan community in 'Santhani'. It also appears that land was not measured and therefore it is difficult to ascertain the boundaries of the land. It also appears that respondent accused Varjan Vigha had filed Civil against the complainant and others in respect of possession of the said land. Therefore, in our view, it would be difficult to accept that respondents – accused committed criminal trespass over the disputed land allegedly belonging to complainant.

8. The witness produced caste certificate at Exh. 14. It indicates that complainant belongs to a member of scheduled caste. The

certificate is issued by Gram Panchayat . The witness admitted that only gazetted officer of Social Welfare Department has authority to issue caste certificate and Government has not given list of castes included in scheduled caste but has issued the Certificate only on the basis of caste of complainant. When the witness was not authorised to issue caste certificate, the document cannot be relied upon and it cannot be said that complainant belonged to a member of scheduled caste. Therefore, prosecution failed to prove that respondents accused committed criminal trespass on the land given to complainant as a member of scheduled caste.

9. The witness examined P.W. 2 Viruben Naran at Exh.33. According to the witness , respondents accused encroached upon land of complainant Karabhai Pababhai who has died and they returned possession after complainant and others made representation to Government. In the cross-examination the witness admitted that respondents – accused had filed civil suit against them in respect of the land.

10. The prosecution produced complaint at

Exh. 42. It is filed by deceased Karabhai Paba. It appears from the complaint that it was filed at 13-45 hrs. on 9-4-2001 for the incident that took place before about 2 years.

11. The complaint indicates that land bearing Survey No. 683 Paiki admeasuring about 7 Acre and 20 Gunthas each was given to the complainant and others. The land allotted to Viruben Naran and Gauriben Kachara Hamir was in possession of respondent accused Varjan Vidha and was being cultivated by him. It is further alleged that respondents accused have encroached upon the land since last two years and despite his requests they do not return possession of the land. It is also alleged that respondents accused gave abuses and threats to him when he demanded possession of the land. In view of this, it appears that respondents – accused encroached upon the land of the complainant and did not return possession when the complainant requested to return possession.

12. The prosecution examined P.W. 3 Punjabhai Budhabhai at Exh. 34. According to

the witness, respondents – accused encroached upon the land belonging to complainant Viruben and Kachrabhai. According to him, as the respondents - accused encroached upon the land a representation was made and the land was got measured and possession of the land encroached upon was given to them. The evidence of this witness also indicates that respondents accused had filed civil suit against them. In view of this evidence, it appears that a civil suit is pending between the parties with regard to possession of the land in question. It also appears that possession of the disputed land was handed over to the concerned owners. Therefore, it is difficult to believe that the respondents – accused committed criminal trespass upon the land of the complainant and others with an intention to take unauthorised possession and for making unauthorised use of the same.

13. The prosecution examined P.W. 4 Parbatbhai Karabhai son of deceased complainant Karabhai at Exh. 35. According to the witness his father Karabhai died before about three months and the land was given to

him as they belonged to Harijan caste. According to him, respondents – accused tried to encroach upon their land, therefore, his father got the land measured and it was found that land belonged to the complainant and therefore the land was returned to them. It also appears from the evidence of this witness that respondents – accused had filed a suit in respect of the land. In view of this evidence it appears that the respondents - accused did not commit criminal trespass over the land belonging to the complainant and the land was in possession of the complaint when complaint was filed.

14. The prosecution also examined P.W. 5 Gauriben Kachrabhai at Exh. 36. According to the witness the respondents – accused tried to encroach upon their land by giving abuses and also uttered derogatory words referable to their caste. According to her, after measurement of the land, respondents – accused removed the encroachment and gave possession of the land to them and since then land is in their possession. The witness also admitted that her land is never encroached upon by

any one. In view of this evidence, it becomes clear that respondents – accused did not commit trespass or tried to take unauthorised possession with an intention to make unauthorised use of the land.

15. The prosecution also examined P.W. 6 Rajendrasinh Nathubhai at Exh 37. The witness recorded the offence. The witness produced the station diary at Exh. 38.

16. The prosecution examined P.W. 7 Kishorbhai Khimjibhai at Exh. 41. The witness recorded complaint Exh.42 and sent it to register the offence. The witness admitted that the complaint was lodged after two years but no explanation was offered for delay. The witness also admitted that the complainant did not give exact time and date of the incident and also did not disclose the acts attributed by the accused.

17. The prosecution also examined P.W. 8 Pratapbhai Punjabhai at Exh. 45. The witness recorded statement of the witnesses and drew panchanama of scene of offence. The witness also collected revenue record in respect of

the land in question and arrested the accused. The witness admitted that no notification has been issued authorising him to investigate offence under the Atrocities Act. The contradictions of the witnesses are proved through this witness.

18. Analysing the evidence, it clearly emerges that complaint is filed after about two years of the alleged incident. The complaint does not indicate exact time and date of the incident. It contains vague accusations of threats, abuses but does not allege that respondents – accused used derogatory words referable to his caste. It is true that witnesses have deposed about threats, abuses and derogatory words referable to their caste but none of witness has specifically stated about the words used by the respondents – accused. Therefore, in our view, the complaint cannot be relied upon. Moreover, the complainant has not offered any explanation for delay in filing of complaint. Therefore, delay is fatal to the prosecution case. Moreover, it appears that when the complaint was filed the land was in possession of the complainant. Therefore, it

cannot be said that the respondents – accused encroached upon it. Moreover, a civil suit was also filed in respect of possession of the land in dispute. Therefore, it is difficult to believe that the respondents accused committed criminal trespass over the property belonging to the complainant with an intention to make unauthorised use.

19. As regards threats to cause death or grievous hurt, there is no evidence. Even witnesses did not depose about accusations of threats. Therefore, in our view, it cannot be said that respondents – accused gave threats to the complainant as alleged by prosecution. Even there is no evidence to indicate that respondents – accused abetted in commission of the offence.

20. As regards offences punishable under the Atrocities Act, prosecution did not produce any evidence to indicate that complainant belonged to a member of scheduled caste. The complaint Exh. 42 does not indicate that the respondents – accused used derogatory words referable to his caste. There is no evidence to indicate that the respondents accused

allegedly encroached upon the land with an intention to make unauthorised use of the same. In absence of cogent and reliable evidence, it cannot be said that respondents – accused illegally occupied the land allotted to to a member of scheduled caste. There is no evidence to indicate that the land in question was allotted to the complainant as he was a member of scheduled caste. Similarly, there is no cogent and reliable evidence to indicate that respondents – accused intentionally insulted complainant with an intention to humiliate him as a member of scheduled caste in public within public view. The witnesses have deposed about the derogatory words allegedly uttered by respondents – accused. However, there are contradictions with regard to the same. Therefore, it would not be safe to rely upon evidence to connect respondents – accused with the offence punishable under the Atrocities Act. In view of above, no interference is warranted in the impugned judgment.

21. For the foregoing reasons, the learned trial Judge was justified in recording

acquittal and no interference is warranted in the impugned judgment. Hence, leave to appeal is refused and the appeal stands dismissed.

(J.R. Vora,J.)

(Bankim N. Mehta, J.)

/JVSatwara/